

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

January 12, 2005

Diane Henderson
Agent
TropiComm
6188 Estate Frydenhoj
St. Thomas, U.S. Virgin Islands 00802

Re: Caribbean Maritime Excursions
Refund of Application Fee
Fee Control No. 0404068994233007

Dear Ms. Henderson:

This is in response to your request dated July 2, 2004, filed on behalf of Caribbean Maritime Excursions (CME) for a refund of the \$200.00 application fee submitted in connection with FCC 605 Main Form, "Quick-Form Application for Authorization in the Ship, Aircraft, Amateur, Restricted and Commercial Operator, and the General Mobile Radio Services" ("Form 605" or "the application"). Our records reflect that CME paid the application fee.

Our records reflect that on January 29, 2004, CME submitted via the Commission's electronic Universal Licensing System (ULS) the Form 605 at issue here. The ULS assigned the application ULS file number 0001599676, which number appeared on a confirmation screen notifying CME that it had successfully submitted the application. Shortly thereafter, CME mailed to Mellon Bank, the Commission's lockbox bank, the \$200.00 application fee and the associated FCC Form 159, "Remittance Advice" ("Form 159"), that CME had completed by hand.¹ On February 9, 2004, Mellon Bank found CME's Form 159 to be defective and the fee payment unprocessable because CME had failed to include on the Form 159 the ULS file number assigned to the application. CME subsequently mailed to Mellon Bank another manually-completed Form 159 and application fee. On March 16, 2004, Mellon Bank found the second Form 159 to be defective and the fee payment unprocessable because CME had failed to include on the

¹ When an applicant submits an application online, ULS assigns the application a ULS file number and shows the correct fee amount due on a confirmation screen. Clicking on the "Continue to Form 159" button displays a Form 159 completed by ULS with the correct information, including the ULS file number assigned to the application. Electronic filers have the option to pay the application fee either online using a credit card or by mail. Those who pay by mail may click on the "Continue to Form 159" button to print the pre-filled Form 159 or they may complete a Form 159 by hand, which the filers must mail with the appropriate payment to the Commission.

Form 159 the correct ten-digit ULS file number assigned to the application.² CME mailed a third manually-completed Form 159 and application fee. Mellon Bank processed the properly-completed Form 159 and deposited the application fee in the Commission's account on April 6, 2004. Thus, CME paid the application fee (in conjunction with a Form 159 acceptable for processing) more than two months after filing its application on January 29, 2004. Because CME failed to pay the application fee within ten days of filing its application on January 29, 2004, the Commission dismissed CME's application on February 18, 2004.³

In your request for relief, you seek "a refund of the fee of \$200 on deposit with [sic] FCC for File #0001599676, which although clearly written on the check along with the FRN number was not on Form 159 since there is no indication in the instructions this is required." You also request "a waiver of the time limit and ask that . . . [the Commission] apply the \$200 refund to the Ship Station License application for Caribbean Maritime Excursions under File #0001599676 on file to expedite licensing and avoid any further hardship." You also request "a waiver of any additional fees in this connection."

The Commission has discretion to waive or defer filing fees upon a showing of good cause and a finding that the public interest will be served thereby.⁴ We construe our waiver authority under section 8 of the Communications Act, 47 U.S.C. §158(d)(2), narrowly and will grant waivers on a case-by-case basis to specific applicants upon a showing of "extraordinary and compelling circumstances."⁵

Contrary to your assertion that the instructions to Form 159 do not indicate that the ULS file number is required on Form 159, the Commission has made clear in the instructions to Form 159, as well as in its rules and in other Commission publications, that the ULS file number assigned to the application at issue here must be included on the associated Form 159. Section 1.1111(c) of the Commission rules, 47 C.F.R. §1.1111(c), provides that

² The nine-digit number that CME wrote on its Form 159 failed to include one of the zeros from the ULS-assigned file number.

³ On February 18, 2004, ULS sent a letter to CME, directed to the attention of Alfred Quetel, dismissing CME's application effective February 18, 2004. See ULS Reference No. 2546028.

⁴ See 47 U.S.C. §158(d)(2); 47 C.F.R. §1.1117(a); *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 5 FCC Rcd 3558, 3572-73 (1990).

⁵ See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, paras. 70, 87-88 (1987); *Sirius Satellite Radio, Inc.*, 18 FCC Rcd 12551 (2003).

[f]ees for applications and other filings pertaining to the Wireless Radio Services that are submitted electronically via ULS may be paid electronically or sent to the Commission's lock box bank manually. When paying manually, applicants must include the application file number (assigned by the ULS electronic filing system on FCC Form 159) and submit such number with the payment in order for the Commission to verify that the payment was made. Manual payments must be received no later than ten (10) days after receipt of the application on ULS or the application will be dismissed. Payment received more than ten (10) days after electronic filing of an application on a Bureau/Office electronic filing system (e.g., ULS) will be forfeited (*see* §§ 1.934 and 1.1109.)[.]⁶

The Wireless Telecommunications Bureau (Bureau) elaborated on section 1.1111(c)'s requirement that electronic filers paying application fees by mail (such as CME) must include the ULS-assigned application file number on the associated Form 159 in *Public Notice, Wireless Telecommunications Bureau (WTB) to Implement Universal Licensing System (ULS) for Ship Station Licensing on November 20, 2000*, DA 00-2439 (released Oct. 30, 2000) (*October 30 Public Notice*). In that public notice, the Bureau stated that electronic filers who (rather than paying the application fee online and using the ULS-generated, pre-filled Form 159) manually complete and mail the Form 159, "must enter the ULS-generated filed number in the FCC Form 159 box labeled FCC Code 2."⁷ The instructions accompanying Form 159 (i.e., "Advice Reference Guide: How to Use FCC Form 159-Remittance Advice") reiterate this requirement. Specifically, the instructions state that box number 29 on the form, which is entitled "FCC Code 2," "is used for special filing codes as required by the Bureau/Office or Public Notice" and should be completed if "instructed to do so."⁸ As discussed, the *October 30 Public Notice* instructs applicants that they must enter the ULS-generated file number in the box labeled FCC Code 2 on Form 159.

⁶ Section 1.934(d)(3) of the Commission's rules, 47 C.F.R. §1.934(d)(3), provides that "[t]he Commission may dismiss without prejudice an application that it finds to be defective. An application is defective if . . . [t]he appropriate filing fee has not been paid[.]" Section 1.1109(b) of the Commission's rules, 47 C.F.R. §1.1109(b), provides that "[t]he schedule of fees for applications and other filings lists those applications [including FCC Form 605] and other filings that must be accompanied by a FCC Form 159, Remittance Advice."

⁷ *See also October 30 Public Notice* (announcing the implementation of ULS for all ship station licensing and the replacement of certain application and other filing forms for ship stations with Form 605); *id.* (noting that this public notice and all other documents pertaining to ULS are located at <http://www.fcc.gov/wtb/uls>).

⁸ The instructions accompanying FCC Form 159 can be found on the Commission's website at <http://www.fcc.gov/Forms/Form159/159.pdf>

The fee filing guide for applicants such as CME using ULS further elaborates on the requirement that the ULS-assigned file number be included on Form 159.⁹ Specifically, the fee filing guide cites *Public Notice, Wireless Telecommunications Bureau Provides Fee Payment Checklist for Applicants Using the Universal Licensing System*, DA 99-1411 (released July 19, 1999) (*July 19 Public Notice*), which states that if the applicant fails to include the ULS file number assigned to the application in the appropriate box on Form 159, along with the correct fee amount, "the fee payment cannot be processed" and that "[i]t is extremely important that only the file number is included in this block (i.e., do not omit leading zeros in the file number or provide additional text such as 'file number')." (Emphasis omitted.) Therefore, contrary to your assertion, we find that the Commission has made clear in section 1.1111(c) of the rules, in public notices, in the instructions to Form 159, and in the fee filing guide that electronic filers who choose to pay application fees by mail must include the ULS file number assigned to the application on the associated Form 159.

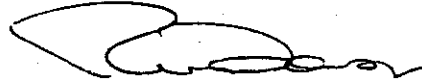
With respect to your request that the Commission waive the ten-day period for filing the application fee under section 1.1111(c), we find that CME's failure to pay the application fee in a timely manner in conjunction with a Form 159 acceptable for processing was the result of CME's failure to understand or otherwise be aware of the Commission's rules and stated policies and instructions as discussed above regarding the required inclusion of the complete ULS-assigned application file number on Form 159. As such, CME's untimely payment of the application fee more than two months after filing the application was caused by circumstances entirely within CME's control. CME has therefore not shown a sufficiently extraordinary or compelling reason to warrant a waiver or deferral of the ten-day filing period and we deny your request.

Regarding your request for a refund of the application fee, section 1.1111(c) provides that application fees received more than ten days after a filer electronically files an application "will be forfeited[.]" As noted, CME paid the application fee in conjunction with a Form 159 acceptable for processing more than two months after filing the underlying application. As discussed, CME's failure to pay the application fee in a timely manner was CME's sole responsibility. We therefore find that you have provided insufficient grounds for a refund of the \$200.00 application fee. *See also* 47 C.F.R. §§ 1.1108 and 1.1113(a). Accordingly, your request that the Commission apply any refund of the application fee to the dismissed CME application is moot.

⁹ See "Wireless Telecommunications Bureau Fee Filing Guide," effective September 11, 2003 ("fee filing guide"), Part B, "Filing Your Application with Wireless Telecommunications Bureau, Universal Licensing System."

We therefore deny your request for application fee relief. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger", written over a horizontal line.

 Mark A. Reger
Chief Financial Officer



6188 Estate Frydenhof

St. Thomas, U.S. Virgin Islands 00802

(340) 775-4107

TO: F.C.C.
ATTN: Mark Rege
FROM: Diane
PAGES W/COVER: 2

DATE: 7/2/04

I am requesting a refund of the fee of \$200 on deposit with FCC for File #0001599676, which although clearly written on the check along with the FRN number was not on Form 159 since there is no indication in the instructions this is required. I am requesting a waiver of the time limit and ask that you apply the \$200 refund to the Ship Station License application for Caribbean Maritime Excursions under File #0001599676 on file to expedite licensing and avoid any further hardship. I am also requesting a waiver of any additional fees in this connection. I am sending a copy of the application and check. Thank you for your consideration.

Sincerely,

Diane Henderson
Agent

cop to Judy

- ① 2 Ltr
- ② Path / Collis
- ③ 15 day tickler